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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

.....

No. 73-697

SYDNEY GETTELMAN, PETITIONER

v.

U.S. COMMISSIONER OF INTERNAL REVENUE

.....

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS

.....

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February 1974

This Petition for a Writ of Certiorari is filed to comply with Order of the Supreme Court of the United States to Petitioner, dated January 21, 1974, copy of which is annexed and marked Appendix S

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

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No. 73-697

SYDNEY GETTELMAN PETITIONER

v.

U.S. COMMISSIONER OF INTERNAL REVENUE

.....

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit, Chicago, Ill.

.....

The Petitioner, SYDNEY GETTELMAN, prays Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, entered August 6th, 1973.

OPINIONS BELOW

the CORRECTED Order of the Court of Appeals, denying

Petition for Rehearing, dated August 6th, 1973,

Original Order of the Court of Appeals, denying

Petition for Rehearing, Dated August 6th, 1973,

Order of the U.S. Court of Appeals, affirming Dismissal Order of District Court Judge Philip W. Tone, dated January 8, 1973,

Dismissal Order of Judge Philip Tone, dated December 29th, 1972

Order of Judge Tone, ordering Plaintiff to file Amended Complaint, dated November 7th, 1972,

Order by District Court Committee, dated October 19th, 1972, that Summonses are not to issue.

JURISDICTION

The Order or Judgment of the U.S. Court of Appeals for the Seventh Circuit was entered August 6th, 1973. See Appendix A.
This petition for Certiorari was filed less than 90 days from the aforesaid. The Jurisdiction of this Court is invoked under USC 28 Section 1254 (1).

QUESTIONS PRESENTED

Having failed in his efforts to engage legal counsel , the five lawyers solicited by Gettelman, having expressed excuses, to avoid engagement in this case, indicating fear of repercussions, Gettelman, a layman, drew his complaint, which he filed Pro Se, alleging that the Commissioner's

determination regarding Information Furnished by Gettelman, in which the Commissioner stated "Careful consideration "was given to the information which you "furnished, and it was found to be of "insufficient value to justify a reward. "Therefor, your claim is not allowable" is invalid, on the grounds that the Information Furnished had been withheld by Berry, Group Intelligence Supervisor, to whom Gettelman had submitted the Information Furnished, in accordance with law and regulations, from reaching Taylor, Federal Estate Tax Examiner, who was then auditing the Estate Tax Return of Frances Conne, deceased, and who had requested it from Berry, in vain, also Taylor's request to Dixon, Audit Bureau Chief, Indianapolis, Indiana, also in vain, thereby causing Taylor's investigation of the alleged fraudulent document filed to substantiate the Frances Conne, deceased, Federal Estate

Tax Return, to be conducted without benefit of the Information Furnished, in the light of which, the facts would have been developed, in relation to which the value of the Information Furnished would be found, which value USC 26 Section 7623 Rule 1(c) prescribes shall be taken into account by the District Director, when determining whether a reward shall be paid, and, if so, the amount thereof.

Pursuant to the Administrative Procedure Act Title 5 USC Section 7-1(a) (2), Section 702, Section 706 (2)(b), Gettelman entered suit in Federal District Court for Judicial Review and and the setting aside of the Commissioner's determination as invalid.

Federal District Judge, Philip W. Tone, ruled that "Plaintiff's Complaint, seeking "review of the failure of Defendant's fail-"ure to pay a reward for receipt of infor-"mation concerning violation of Revenue

"Laws," is dismissed for failure to state "a claim, upon which relief can be granted. "The action is brought pursuant to the "Administrative Procedure Act, 5 USC 701 "et seq. It is clear, however, that the "decision to pay a reward has been commit- "ted to Agency discretion. 26USC Sec.7623; "26 CFR 301. 7623 -1. Accordingly, Judi- "cial Review of such action is inappropre- "ate under the provisions of 5 USC- "701 (a) (2)."

The questions thereby arising are:

1- Whether the actions concealing and covering up the Gettelman Information Furnished, relating to Federal Estate Tax violation of the Internal Revenue laws of the United States, by Berry and Dixon, are in conflict with USC18 Section 1001

2- Whether the Commissioner, when exercising his discretionary authority under 26 USC Section 7623, is required to obey Regulation 1(c)

3- Whether Judge Tone's false construction of the facts and his Conclusions of Law, which have no application to the true facts stated in the Gettelman Complaint, upon which Judge Tone's dismissal was based, is in conflict with a- Right to petition the Government for a redress of grievances against Federal officers Article 1 Bill of Rights b- Due Process Clause Section 1 14 th Amendment United States Constit ution

On this basis, Gettelman appealed his case to the Court of Appeals of the Seventh Circuit, whereby he sought reversal of the dismissal and Order of the Court of Appeals to remand the case to the District Court, where the Gettelman Complaint was to be heard.

QUESTIONS PRESENTED (continued)

The panel, consisting of Chief Judge Luther M. Swygert, Circuit Judge Roger J. Kiley, and Circuit Judge Thomas E.

Fairchild, rendered ORDER

"Plaintiff-Appellant appeals pro se
"from the dismissal of his Complaint, in
"which he sought Judicial Review of the
"Commissioner of Internal Revenue's re-
"fusal to pay an informer's reward for
"informa tion regarding Tax fraud. The
"District Court dismissed the Complaint
"for failure to state a claim, upon which
"relief could be granted. Considering
"this appeal, under Rule 2 of the Federal
"Rules of Appellate Procedure, on the
"briefs and record, we affirm."

"This is the second time this Appellant
""has sought relief from the Commissioner's
"refusal to pay him a reward for informa-
"tion he allegedly supplied. The identical
"issues, parties and and facts were in-
"volved in Gettelman v. Commissioner of
"Internal Revenue, No. 71-1360, unreported
"order (7th Cir., Jan. 4, 1972). cert.
"denied 407 U.S. 915, a copy of which is
"attached."

"When the present case, No. 72-C-2611 "was before the district Court, a prac- "tice of that court pertaining to pro se "actions was followed, no summons was "issued, and hence no answer or motion "to dismiss filed by defendant Commissioner. "Undoubtedly the Commissioner would have "pleaded that the earlier judgment was "res judicata and it is clear that it was. "The district court, however,sua sponte, "considered Plaintiff's amended complaint "and decided that the decision to pay a "reward under 26 USC. Sec 7623 has been "committed to agency discretion, is there- "fore not subject to judicial review, and "dismissed the complaint for failure to "state a claim upon which relief can be "granted."

"Upon this appeal, the Commissioner "relies in part upon the earlier judgment "as res judicata. We agree, and although "that defense was not before the district

"court, it would be an exercise in futi-
"lity to remand for its consideratiob.
"Accordingly, the judgment of dismissal
"is confirmed."

In case No. 71-1360, Gettelman filed suit in District Court, to correct error of the listing of the Muncie Parts Mfg. Co., Inc., as the Federal Estate Tax payer, instead of the Estate of Louis Conne, deceased, as the Federal Estate Tax payer, of which Muncie Parts Mfg. Co., Inc. was an asset, and also to correct the error of the listing of the Muncie Parts Mfg. Co., not inc. and the Shafer Mfg. Co., Inc. as the Federal Estate Tax payers instead of the Estate of Frances Conne, deceased, as the Federal Estate Tax payer, of which Muncie Parts Mfg. Co., not inc. and the Shafer Mfg. Co., Inc. were assets, in the Application and Public Voucher for reward, for Original Information Form 211, filed by Gettelman to apply for a reward in accordance with

law and regulations for original information furnished to Vergil B. Berry, CR2095E Group Supervisor Intelligence Division, Indianapolis, Indiana, on the 12th of February 1968, leading to the detection of a violation of the Internal Revenue Laws of the United States, by Federal Estate Tax of the Estate of Louis Conne, deceased, and the Estate of Frances Conne, deceased, to the recovery of Internal Revenue Taxes, penalties and fines and forfeitures. This Application Form 211 was prepared by Berry, signed by Gettelman, and filed by Berry. John Marvel, Assistant to District Director, IRS, Indianapolis, Indiana, from whom Gettelman had received District Director's determination regarding the Income Tax item listed in the Application, ruled that, because the Federal Estate Tax payers listed in the Application were companies, and companies are not

Federal Estate Tax payers, therefore the Information Furnished, as stated in the Application, would not be eligible for processing nor the rendering of determination in the usual manner, as is the practice of the IRS, to correct this error on Berry's part, Gettelman sought to reach Berry, and, upon inquiry for Berry at the IRS office, Gettelman was told that Berry was no longer with the IRS, and the Indianapolis office did not know his present whereabouts. To seek assistance of the District Court to correct this error in the Gettelman Application for Reward, Gettelman filed suit for Declaratory Judgment, to list the Federal Estate Tax payer in the Application, Estate of Louis Conne, deceased, Muncie Parts Mfg. Co., Inc. its asset; to list the Federal Estate Tax payer Estate of Frances Conne, deceased, Muncie Parts Co. not inc. and Shafer Mfg. Co., Inc. its

assets. This suit was dismissed by Judge Lynch's Order: "Defendant's Motion to "Dismiss granted in accordance with "Rule 12(b)(1)(2) and (6) of the Federal "Rules of Civil Procedure. Plaintiff has "not alleged the substance of a Contract "Action against the United States, and "Plaintiff is not entitled to recover "upon the facts alleged."
Chase vs. U.S. 60F Supp.211 (1945);
Barker vs. Lein 366F 2d 757 (1966)
March 5, 1971 Judge Lynch ordered "Motion "to Reconsider is hereby denied."

Chicago's newspaper Chicago Today, reported on Dec. 16, 1971, that, during the period commencing April 1969 and up to the date of the newspaper report, Judge Lynch had been trying to pursuade the Commissioner of Internal Revenue to call off his agents, also the U.S. Attorney and the U.S. Attorney General, to halt their assistants from further investigation of Judge Lynch's Income Tax Returns and other alleged

irregularities, relating to his alleged connections with the events leading up to the Illinois Race Track scandal.

William J. Bauer, U.S. Attorney (now (Federal Judge) certified that he had read the pleading, that, to the best of his knowledge, information and belief, there is good grounds to support the Commissioner's Motion to Dismiss, upon which Judge Lynch based his Dismissal Order, which stated a cause of action, alleged by Gettelman, other than that stated by Gettelman in his Complaint, also type of relief other than what the Gettelman Complaint seeks.

On Aug. 6th, 1973, Court of Appeals for the Seventh Circuit,Luther M. Swygert, Chief Judge, Roger J. Kiley, Circuit Judge, Thomas E. Fairchild, Circuit Judge, denied Gettelman's Petition for Rehearing and suggestion that it be heard in banc, filed July 16, 1973 with the Clerk of the Court. The denial was as follows: "On considera-"tion of the petition for rehearing and

"suggestion that it be heard in banc , filed
"in the above-entitled cause, no judge in
"active service having requested a vote
"thereon, nor any judge voted to grant the
"suggestion, and a majority of the members
"of the panel having voted to deny a rehearing.

"IT IS ORDERED THAT the petition for a
"rehearing in the above-entitled cause be
"and the same is hereby denied."

Subsequently, Gettelman received CORRECTED Order, which stated: "On consideration of "the petition for rehearing and suggestion "that it be heard in banc filed in the above- "entitled cause, no judge in active service "having requested a vote thereon, nor any "judge voted to grant the suggestion, and "the members of the panel having voted to "deny a rehearing,

"IT IS ORDERED that the petition for a
"rehearing in the above-entitled cause be
"and the same is hereby denied."

In Case No. 71-1360, unreported order (7th Cir.)(Jan. 4th, 1972) Court of Appeals for the Seventh Circuit panel, consisting of Judge F. Ryan Duffy, Senior Circuit

.Circuit Judges, affirmed Judge Lynch's order, which was approved Dec. 15, 1971, and entered Jan. 4, 1972. On Dec. 15, 1971, James R. Thompson's (U.S.Attorney) statement, which was printed in the newspaper , Chicago Today, he said that the investigation by a special Internal Revenue Task Force, which resulted in the indictment of Judge Kerner, for Tax Fraud, Mail Fraud and Perjury on Dec. 15, 1971,which was commenced in April 1969 and continued to the date of the indictment, Judge Kerner was trying to carry on discussions with the Justice Department, regarding the investigation.

Authority For Promulgation Of Rules Title 28 USC Sec.2072 Rules of Civil Procedure. Such rules shall not abridge, enlarge or modify any substantive right.

Rule 35 (b) Rules of Appellate Procedure

A party may suggest the appropriateness of a hearing or rehearing in banc. The Clerk shall transmit any such suggestion to the judges of the court, who are in regular

active service, but a vote will not be taken whether the cause shall be heard or reheard in banc, unless a judge in regular active service or a judge who was a member of the panel that rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

The questions thereby arising are:

4 (a) Whether the actions by Chief Judge Swygert and Judges Roger Kiley and Thomas Fairchild, in affirming the Judge Tone Order, even though it is indisputed that a false cause of action, other than that stated in the Gettelman Complaint, and also a false type of relief other than the relief sought by Gettelman in his Complaint, were falsely created, which Judge Tone designed to fit his conclusions oflaw, not applicable to the Gettelman Complaint, to sustain his dismissal of the Gettelman Complaint for failure to state a claim upon which relief can be granted, which Gettelman

contends is in conflict with the Due Process Clause of the 14th Amendment and Article 1 of the Bill of Rights.

4 (b) It is indisputed that the Information Furnished relating to the Federal Estate Tax violations of the Internal Revenue Laws, in accordance with law and regulations, furnished by Gettelman, had been concealed and covered up by Berry, IRS Intelligence Officer,and Dixon, IRS Audit Bureau Chief, who withheld the Information Furnished from Taylor, Federal Estate Tax Return Examiner, the the investigator of the violations, which Gettelman contends is in conflict with Title 18 USC Sec. 1001.

4 (c) Even though it is indisputed that Chief Judge Swygert and Judges Kiley and Fairchild of the Court of Appeals knew that Gettelman, a layman, had drawn his complaint, which he filed pro se, because

the five lawyers he had solicited to seek legal counsel, were not available, because of fear of repercussions in a suit against the Commissioner, the judges allowed the order of the District Court to stand in accordance with their practice not to issue summons, thereby excusing the Defendant Commissioner from filing an answer to the Gettelman Complaint or a motion to dismiss, because the Complaint was filed pro se, which Gettelman was helpless to cure, as the facts here show, which Gettelman contends is in conflict with the Equal Protection of the Laws clause of the 14th Amendment.

4 (d) Even though is is indisputed that in Case No. 71-;360, in which U.S. Attorney William J. Bauer (now Federal (Judge) certified that the Commissioner's Motion to Dismiss, which was the basis for dismissal by Judge Lynch, which

stated that Gettelman's Cause of Action was to establish a contract right, and the relief sought by Gettelman was to have the Court force the Commissioner to pay Gettelman a reward for Information which the Commissioner had received from Gettelman, which is false, the true Cause of Action being to obtain a Declaratory Judgment to correct the listing of the Federal Estate Tax payer in the application filed by Gettelman for reward, which, when prepared by Berry, Group Intelligence Supervisor, incorrectly listed the Asset Companies as the Federal Estate Tax payers, instead of the Estates of which the companies listed were assets, so as to conform with requirements of the IRS to qualify for processing and rendering by District Director of determination, the practice of the IRS. Mr. Bauer's, signature had certified that the Commissioner's Motion to Dismiss was supported

by good grounds to support facts and conclusions of law, which, in reality, had no relationship to the true facts of the Gettelman Complaint. The Motion to Dismiss, Gettelman contends, is false, a sham, to secure dismissal by any manner of means, in conflict with Rule 11 Rules of Civil Procedure.

4 (e) Even though the facts stated, which are indisputed, and are to the contrary, Judges Swygert, Kiley and Fairchild still rule, "This is the "second time this Appellant has sought "relief from the Commissioner's refusal "to pay him a reward for information he "allegedly supplied. The identical "issues, parties and facts were in- "volved in Gettelman v. Commissioner of "Internal Revenue No. 71-1360, unreported "order (7th Circuit, Jan. 4, 1972) a "copy of which is attached."

All of which Gettelman contends is in conflict with the Due Process Clause

of the 14th Amendment. Even though the action of the panel of judges of Circuit Court 7th, which affirmed the dismissal, based on the Commissioner's false motion, had Judge Kerner as a member who sat in this case during the period that U.S. Attorney Thompson had stated in the newspaper Chicago Today, that Kerner, through his attorney, was trying to negotiate with the Department of Justice prior to Judge Kerner's indictment for Tax Fraud, Mail Fraud and Perjury on Dec. 15, 1971, the Order, in this case, having been approved Dec. 13, 1971, and entered Jan. 4, 1972.

5 Whether the Court of Appeals for the 7th Circuit Clerk's failure to transmit the Gettelman Petition for Rehearing, containing suggestion for rehearing In Banc, which was filed with the Clerk, on July 16, 1973, to comply on time with Rule 40(a) of Rules of Appellate Procedure and its denial, entered Aug. 6, 1973, to the Judges of the Court, who are in regular active service,

and upon whom discretionary authority had been conferred, to determine whether interested to consider the Petition, to determine whether Petition merits request for a vote of all the Judges of the Court in active service, which Rule 35(b) prescribes the Clerk SHALL, due to a number of the Judges of the Court, who are in regular active service, being on vacation during the period between July 16, 1973 and Aug. 6, 1973. This is in conflict with the Equal Protection of the Laws Clause of the 14th Amendment.

6- Whether suit for Declaratory Judgment in Case No. 71-1360 of which the Cause of Action was to correct error in the listing of names of companies which were assets of the Estate, as the Federal Estate Tax payers, instead of the names of the Estates as the Federal Estate Tax payers, in Application Form 211, filed with the IRS by Gettelman to apply for a reward for Infor-

mation Furnished relating to Federal Es-, tate Tax violations of the Internal Revenue Laws of the United States to conform with District Director's ruling so as it be eligible for processing and determination in accordance with applicable laws, rules and IRS practice, and Suit No. 73- 1145, in which the Cause of Action is for review of the Commissioner's determination, in which he stated, "Careful consideration "was given to the information which you "furnished, and it was found to be of in- "sufficient value to justify a reward. "Therefore, your claim is not allowed." which Gettelman challenged on the grounds that the District Director could not have known that the Information Furnished was of "insufficient value" "to justify a re- "ward" as the value of the Information Furnished, which is found as prescribed by Rule 1(c) by taking the result of its relationship to the facts developed by the investigation of the violation,

which value Rule 1(c)prescribes the District Director shall take into account when determining whether a reward shall be paid, and, if so, the amount thereof. The District Director did not have this value when making his determination, as the investigation to develop the facts was stopped by the Intelligence Officer and IRS Audit Bureau Chief, who had withheld the Information Furnished from the Federal Estate Tax Return Examiner, who was investigating the Estate Returns in question. Judges Swygert, Kiley and Fairchild, in their Order, stated "On this "appeal, the Commissioner relies, in "part, upon the earlier judgment as res "judicata. We agree, and although that "defense was not before the District "Court, it would be an exercise in futil-"ity to remand for its consideration. "Accordingly, the Judgment of Dismissal "is affirmed." As there never was an earlier judgment as res judicata for the

Commissioner to rely upon or a Judgment of Dismissal for res judicata to affirm, why this representation by the Judges Swygert, Kiley and Fairchild? (Whether)

Case No. 71-1360 and Case No. 73-1145 are res judicata?

7- Whether Complaint which shows grounds that the Commissioner, when exercising his discretionary authority, under Rule 1(a) when determining whether a reward shall be paid, and, if so, the amount thereof, and then fails to take into account the value of the Information Furnished in relation to the facts developed by the investigation of the violation, as Rule 1(c) prescribes he shall, is a claim upon which relief can be granted.

8- Whether the actions here reported regarding these judges Lynch, Kerner, Tone, Swygert, Kiley, Fairchild, who are all lawyers, versed in the law and the Constitution, and, in the light of their oath, is in conflict with the Good Behavior Clause

of Section 1 of Article 3 of the United States Constitution

STATEMENT OF FACTS

On Feb. 12, 1968, Gettelman filed Application and Public Voucher For Reward for Original Information, Form 211, to apply for a reward, in accordance with law and regulations, for original information furnished to Vergil B. Berry, CR-2095-E, Group Supervisor Intelligence Division, Indianapolis, Indiana IRS, leading to detection of a violation of the Internal Revenue Laws of the United States by Estate Tax and Income Tax of the Estate of Louis Conne, deceased, of which Muncie Parts Mfg. Co., Inc. was an asset, and the Estate of Frances Conne, deceased, of which Muncie Parts Mfg. Co., not inc. and Shafer Mfg. Co., Inc. were assets, and to the recovery of Internal Revenue Taxes, Penalties, fines and forfeitures,

The Information Furnished consisted of information and supporting material, which shows concealment of an agreement, disclosure of which would prove that the Affidavits, Appraisals, Contracts, Financial Statements designed and filed by the Estates' Residuary Beneficiaries, whereby Federal Estate Tax Assessments on Estate Assets of around $300,000.00 instead of around $3,000,000.00 was effected by omissions of Estate Assets, use of dummy corporation, sham Buy and Sell Agreement.

Around Aug. 12, 1968, Plaintiff received a Long Distance telephone call from William C. Taylor, Federal Estate Tax Return Examiner, Los Angeles, Cal., who stated that he had been assigned the audit of the Federal Estate Tax Return of the Estate of Frances Conne, deceased, and who requested information from Gettelman regarding omissions of assets and other irregularities, in connection with this Estate Tax Return,

and also sent Gettelman a letter to this effect. Gettelman told Taylor that he would call Berry at Indianapolis IRS office, to ask him if it was proper for Gettelman to send Taylor the information. Gettelman phoned Berry Long Distance and was told by Berry not to send any information, but to write Taylor and tell him to write Dixon, Internal Revenue Service Chief of the Audit Division, Indianapolis, Ind., as the information Furnished is filed in Dixon's office. Gettelman wrote Taylor accordingly, in compliance with Berry's instructions.

Nov. 13, 1968, Gettelman received a letter from the District Director IRS Indianapolis, stating that the Information Furnished was found to be of insufficient value to justify a reward. About Jan. 13, 1969, Taylor informed Gettelman that he had written Dixon for the Information Furnished, in ac-

cordance with Gettelman's letter to him, but his letters had been ignored.

On Jan. 13, 1969, Gettelman was told by the Long Distance operator that Berry was no longer with the IRS, and that the office had told the Long Distance operator that they did not know Berry's whereabouts.

On Jan. 13, 1969, Gettelman spoke to John Marvel, Assistant to District Director, Daley, to inquire when he could expect determination, regarding the Federal Estate Tax items listed in the Application, having previously received determination regarding the Income Tax item of the Application. John Marvel informed Gettelman that the names of companies were listed as the Federal Estate Tax payers in the Application, and companies are not Federal Estate Tax payers, therefore, to make the Application eligible for processing and determination, it would be necessary

to list the names of the Estate of Louis Conne, deceased, and Frances Conne, deceased, instead of the companies, which are their assets, as incorrectly written up by Berry.

Jan. 13, 1969, Gettelman phoned Dixon at Indianapolis, to ask the reason why Dixon ignored Taylor's request for the Information Furnished, and Dixon said it was inadvertance on his part. Gettelman told Dixon that he would call withholding of information showing violations of Internal Revenue Laws while Taylor's investigation of the violations was in progress, which Dixon and Berry knew about, obstruction of justice. Dixon replied, "You can call it anything you "want, and what are you going to do a-"bout it?"

Actions by Berry and Dixon, who withhelf the Information Furnished, thereby

shutting off Taylor's examination of the documents filed, to effect the unlawful Federal Estate Tax Assessments in the light of the Information Furnished, whereby Taylor would have devaloped the facts in relation to which which, the value of the Information Furnished would have been found.

The amount of additional taxes, penalties and fines recoverable as the result of the Information Furnished, would have been ascertained.

The facts here show that the value of the Information Furnished had not been found, as prescribed by USC 26 Section 7623 Regulation 1(c) without which the Commissioner's determination was rendered without compliance with Regulation 1(c). Being without authority of law, the determination is invalid.

Pursuant to Administrative Pro-

cedure Act, Title 5 Section 701(a)(2) Title 5 Section 702, Title 5 Section 706 (2)(a)(b) on the basis that the determination had not taken into account, as the Regulation prescribes it shall, the value of the Information Furnished found by the procedure prescribed by the Regulation, Gettelman requested the District Court to review the Determination, hold the Determination unlawful and set it aside as a- not according to the requirements by the Regulation b- contrary to a privilege, Gettelman is entitled to under the Regulation c- without observance of procedure required by law

So as to secure the determination to which Gettelman is entitled, under USC26 Section 7623 Regulation 1(c) in which the value of the Information Furnished had been found by the procedure as prescribed by Regulation 1(c)

had been taken into account as Regulation 1(c) prescribes it shall, when it is determined whether a reward shall be paid, and, if so, the amount thereof. WHEREFORE, Gettelman sought intervention of the Court to cause: 1- full disclosure of the concealed agreement, 2- test the validity of the omissions in relation to facts learned by the disclosure of concealed agreement, 3- test the validity of the Buy and Sell Agreement, 4- test validity of the Shafer purchases, 5- test validity of omission of Shafer Mfg. Co., Inc., 6- test validity of the Shafer affidavit, 7- test validity of the Shafer appraisal, 8- test validity of the transfer of the $190,000.00 fund

In the event additional taxes,

penalties and fines are recovered, as a result of the Information Furnished, the District Court to rule what percentage of the sums so recovered is fair and adequate compensation for Gettelman in this case, and the Court to order that sum to be paid to Gettelman as prescribed by USC26 Section 7623 1(c)

Judge Tone's dismissal of this case states as follows, "Plaintiff's "Complaint seeking review of the "failure of Defendant to pay a re- "ward for receipt of information concerning violation of Revenue Law "is dismissed for failure to state "a claim upon which relief can be "granted. The action was brought "pursuant to the Administrative "Procedure Act, 5USC Sec.701 et seq. "It is clear, however, that the de- "cision to pay a reward has been

"committed to Agency discretion. 26USC "S.2673; C.F.R. S301.7623-1. Accordingly "Judicial Review of such action is in- "appropriate under the provisions of "5 USC Sec.701 (a) (2)."

Judges Swygert, Kiley and Fairchild of Court of Appeals affirmed.

CONSTITUTIONAL PROVISIONS INVOLVED

Bill of Rights Article 1

Constitution of the United States Article 3 Section 1

Constitution of the United States 14th Amendment Section 1

REASONS FOR GRANTING THE WRIT

1- The decision below directly conflicts with the Due Process principles enunciated in this Court's United States ex rel. Accardi v. Shaughnessy ruling.

In United States ex rel. Accardi v.

Shaughnessy, 347 U.S.260, 74 S.Ct. 499,98 L.Ed. 681 (1954) this Court announced the doctrine that an agency of the Government must scrupulously observe rules, regulations or procedures which it has established. When it fails to do so, its action cannot stand and the courts will strike it down. There the Supreme Court vacated a Deportation Order of the Board of Immigration because the procedure leading to the Order did not conform to the relevant regulations. The failure of the Board and of the Department of Justice to follow their own established procedures was held a violation of Due Process.

2- The decision below directly conflicts with the Due Process principles enunciated in this Court's Conley v. Gibson Ruling.

In Conley v. Gibson 1957, 78 S.Ct.99, 355 U.S. 41, 2L ED 2d 80. the United

States Supreme Court held that in apprais-
ing the sufficiency of the complaint, we
follow the accepted rule that a complaint
should not be dismissed unless it appears
beyond doubt that the plaintiff can prove
no set of facts in support of his claim,
which would entitle him to relief.

3- Chief Judge Swygert, Judges Kiley and
Fairchild of the Court of Appeals, have
so far departed from the accepted and
usual course of Judicial Proceedings, as
to call for an exercise of the Supreme
Court's power of supervision, by their
denial of Gettelman's Petition for Re-
hearing, which contained a suggestion
for rehearing in banc under Rule 35(b)
Rules of Appellate Procedure in view
of the Court of Appeals for Seventh
Circuit Clerk's failure to transmit
the Gettelman Petition for Rehearing,
containing suggestion for Rehearing in
banc, which was filed with the Clerk,

on July 16, 1973, to comply with Rule40(a) of Rules of Appellate Procedure, and its denial, entered Aug. 6, 1973, to the Judges of the Court, who are in regular active service, and upon whom discretionary authority had been conferred, to determine whether interested to donsider the Petition, to determine whether Petition merits their request for a vote of all the Judges of the Court in active service, which Rule 35(b) prescribes the Clerk shall, due to a number of Judges of the Court who are in active regular service, being on vacation during the period between July 16, 1973 and Aug. 6, 1973. b- These three Judges of the Court affirmed judgment as res judicata, even though there never had been judgment rendered on res judicata.

4- Chief Judge Swygert, Judges Kiley and Fairchild of the Court of Appeals sanctioned such a far departure from the

accepted and usual course of Judicial Proceedings by the District Court, as to call for an exercise of the Supreme Court's Power of Supervision.

a- False creation of cause of action and false creation of type of relief sought, authored by Judge Tone to sustain his Dismissal of the Gettelman Complaint, is unlawful.

b- Sanction of action by the Commissioner, in connection with the drawing of the Commissioner's Motion to Dismiss, in Case No. 72-C-2611, in which he stated a false Cause of Action and a false type of relief other than that stated in the Gettelman Complaint; U.S. Attornew William B. Bauer's signature certifying that this Motion is not false or a sham, Federal Judge Lynch's Dismissal, based upon this false Motion, Federal Judge Lynch sitting in this case during the period in which he was reported by

the newspaper Chicago Today, to have been trying to pursuade the Commissioner, the U.S. Attorney and the U.S. Attorney General to call off their agents and assistants from their investigation of Judge Lynch's connections with the events which led to the Illinois Race Track scandal, the panel of Circuit Judges, consisting of Senior Judge Duffy, Judge Stevens and Judge Kerner, affirmed the Judge Lynch Order of Dismissal. Judge Kerner, who, on Dec. 15, 1971, was indicted in Federal Court for Tax Fraud, Mail Fraud, Conspiracy and Perjury, about whom U.S. Attorney Thompson stated in the Chicago Today newspaper on Dec. 16, 1971, to have, through his lawyer, been carrying on discussions with the Department of Justice, on the investigation regarding his case, prior to the date of indictment, during the period which fitted the time that Kerner was sitting on

this case. Judgment of the Gettelman case was rendered Dec. 13, 1971.

c- Sanctioned the actions of Berry and Dixon, who obstructed the investigation by Taylor, of the Federal Estate Tax violation of the Internal Revenue Laws, by concealing and stopping the Information Furnished from reaching Taylor

d- Sanctioned a practice by the District Court, pertaining to Pro Se action, in which no summons is issued and no answer filed or Motion to Dismiss filed. The Defendant Commissioner was thereby excused from filing an answer to the Gettelman Complaint of Motion to Dismiss it, causing Gettelman, who was already handicapped by the disadvantage of being without legal representation and the Defendant Commissioner being well-represented by an array of U.S. Attorneys and U.S. Attorney's General, whose services are paid for by the Taxpayers, and Gett-

elman being without legal representation, not by choice, but because the five different lawyers whom Gettelman solicited for engegement of their services in this case, having found excuses to stay out of the case, indicated fear of repercussions in such a suit against the Commissioner.

The actions by the People' deputies, some not authorized, some forbidden by the Constitution and the Bill of Rights, experienced by Gettelman, during the course of these cases, which caused Gettelman to sustain injury, indicates Commissioner's manifested determination to avoid disclosure of the truth, which the Information Furnished would reveal regarding the alleged Federal Estate Tax violations of the Internal Revenue Laws regarding the Estate of Louis Conne, deceased, and the Estate of Frances Conne, deceased, and both probated before a Commissioner, uncontested in which Federal Estate

Tax Assessments were effected fraudulently on Estate Assets of $300,000.00 instead of $3,000,000.00.

The People's Deputies here involved, exercised functions of Government, some not authorized, some forbidden by the Constitution and the Bill of Rights, authority for which can only be acquired with the People's consent. They are in violation of their Oath of Office and in conflict with Article 3 Section 1 U.S. Constitution: "The Judges, both "of the supreme and inferior Courts, Shall hold their offices during good "behavior."

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment of Court of Appeals for the Seventh Circuit.

Respectfully submitted

Sydney Gettelman Petitioner Pro Se

February 1974 312-275-3385

CORRECTED

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

APPENDIX A

AUGUST 6, 1973

Before

Hon. LUTHER M. SWYGERT, Chief Judge

Hon. ROGER J. KILEY, Circuit Judge

Hon. THOMAS E. FAIRCHILD, Circuit Judge

SYDNEY GETTELMAN,
Plaintiff-Appellant,
No. 73-1145 vs.
UNITED STATES COMMISSIONER OF INTERNAL REVENUE, Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
(72 C 2611)

On consideration of the petition for rehearing and suggestion that it be heard en banc filed in the above-entitled cause, no judge in active service having requested a vote thereon, nor any judge voted to grant the suggestion, and the members of the panel having voted to deny a rehearing,

IT IS ORDERED that the petition for a rehearing in the above-entitled cause be and the same is hereby denied.

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

APPENDIX B

AUGUST 6, 19 73

Before

Hon. LUTHER M. SWYGERT, Chief Judge

Hon. ROGER J. KILEY, Circuit Judge

Hon. THOMAS E. FAIRCHILD, Circuit Judge

SYDNEY GETTELMAN,
Plaintiff-Appellant,

No. 73-1145 vs.
UNITED STATES COMMISSIONER OF INTERNAL REVENUE, Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
(72 C 2611)

On consideration of the petition for rehearing and suggestion that it be heard en banc filed in the above-entitled cause, no judge in active service having requested a vote thereon, nor any judge voted to grant the suggestion, and a majority of the members of the panel having voted to deny a rehearing,

IT IS ORDERED that the petition for a rehearing in the above-entitled cause be and the same is hereby denied.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

APPENDIX C

July 2, 19 73

Before

Hon. LUTHER M. SWYGERT, Chief Judge

Hon. ROGER J. KILEY, Circuit Judge

Hon. THOMAS E. FAIRCHILD, Circuit Judge

SIDNEY GETTELMAN,
Plaintiff-Appellant,

No. 73-1145 vs.

COMMISSIONER OF INTERNAL REVENUE,
Defendant-Appellee

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
72 - C - 2611
Philip W. Tone, Judge.

ORDER

Plaintiff-appellant appeals pro se from the dismissal of his complaint in which he sought judicial review of the Commissioner of Internal Revenue's refusal to pay an informer's reward for information regarding tax fraud. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. Considering this appeal under Rule 2 of the Federal Rules of Appellate Procedure on the briefs and record, we affirm.

This is the second time this appellant has sought relief from the commissioner's refusal to pay him a reward for information he allegedly supplied. The identical issues, parties, and facts were involved in Gettelman v. Commissioner of

Internal Revenue, No. 71-1360, unreported order (7th Cir., Jan. 4, 1972), cert. denied 407 U.S. 915, a copy of which is attached.

When the present case, No. 72-C-2611, was before the district court, a practice of that court pertaining to pro se actions was followed, no summons was issued, and hence no answer or motion to dismiss filed by defendant Commissioner. Undoubtedly the Commissioner would have pleaded that the earlier judgment was res judicata and it is clear that it was. The district court, however, sua sponte, considered plaintiff's amended complaint and decided that the decision to pay a reward under 26 U.S.C. §7623 has been committed to agency discretion, is therefore not subject to judicial review, and dismissed the complaint for failure to state a claim upon which relief can be granted.

On this appeal, the Commissioner relies in part upon the earlier judgment as res judicata. We agree, and although that defense was not before the district court, it would be an exercise in futility to remand for its consideration. Accordingly, the judgment of dismissal is affirmed.

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Approved- December 13, 1971
Entered - January 4, 1972

Before

Hon. P. RYAN DUFFY, Senior Circuit Judge

Hon. OTTO KERNER, Circuit Judge

Hon. JOHN PAUL STEVENS, Circuit Judge

SIDNEY GETTELMAN,
Plaintiff-Appellant

No. 71-1360 vs. ORDER

COMMISSIONER OF INTERNAL REVENUE,
Defendant-Appellee

Plaintiff sued the Commissioner of Internal Revenue alleging that plaintiff had supplied information to various revenue agents showing improprieties regarding the estate tax returns of Frances Conne and Louis Conne, both deceased, as well as the tax returns of Muncie Parts Mfg. Co., Inc., Muncie Parts Mfg. Co. and Shafer Mfg. Co., Inc. The plaintiff alleged he filed a formal claim for a reward under Section 7623 of the Internal Revenue Code of 1954.

The complaint alleges that the District Director, Indianapolis, Indiana, informed plaintiff that his claim for reward was denied on the grounds that the information submitted was found to be insufficient to justify a reward.

The complaint asks that the District Court declare that a valid contract exists between the Commissioner and plaintiff, and to have the District Court force the Commissioner to exercise his discretion in favor of plaintiff by paying him the reward.

Plaintiff has appeared throughout this litigation pro se and personally made the argument before this Court. We shall, therefore, in some detail explain why the action of the District Court dismissing the complaint was correct and must be affirmed.

Section 7623 states that the "Secretary or his delegate ... is authorized to pay ... as he may deem necessary ... for ... bringing to trial and punishment persons guilty of violating internal revenue laws." In Barker v. Lein, 366 F. 2d 757 (1 Cir., 1966), it is stated "The allegations that plaintiff furnished information to the I.R.S., and that as a result the United States recovered some taxes, do not provide sufficient basis for a claim." indicating the discretionary nature of payments by the Commissioner to informers.

At best, there was no offer on the part of the Commissioner to pay any definite sum but only such sum as he "may deem suitable." Gordon v. United States, 36 F. Supp. 639 (Ct. Cl., 1941). It is clear that in this case there was no contract between the parties.

A further reason that plaintiff cannot recover in this suit is that the relief sought is to compel the Commissioner to exercise his discretion in favor of plaintiff by paying him a reward. This involves the Commissioner in his official capacity as an agent of the United States. This suit is, in fact, against the United States. However, it is well established the sovereign cannot be sued without its consent. Magnus v. United States, 234 F. 2d 673 (7 Cir., 1956).

At the oral argument on this appeal, plaintiff stated his real purpose in prosecuting this suit was to force the Commissioner to process his claim for a reward. However, it is clear that the Commissioner has processed plaintiff's claim by denying his claim for a reward from a letter with the signature of the District Director, Indianapolis, received in November 1968 by plaintiff as admitted in his brief to this Court.

IT IS ORDERED, that the decision of the District Court was correct and should be and is

AFFIRMED

APPENDIX D

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable J. TONE

Cause No. 72 C 2611 Date January 8, 1973

Title of Cause: Sydney Gettelman, Plaintiff, vs. United States Commissioner of Internal Revenue, Defendant

Brief Statement of Motion: Motion to Amend Order to Dismiss

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel: Sydney Gettelman, Plaintiff Pro Se
5200 North Sheridan Road, Chicago, Illinois 60640

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent.

Please take notice that on January 8, 1973 at the opening of court or as soon thereafter as Plaintiff may be heard, I will appear before Judge J. Tone in the courtroom usually occupied by him in the U.S. CourtHouse at 219 South Dearbor Street, Chicago, or before such other Judge who may be sitt in his place or stead, and there and then present a motion amend and memorandum in support thereof, four copies of whi were delivered to your office on January 5, 1973.

Reserve space below for notations by minute clerk

Motion of plaintiff to Amend Order to Dismiss, is denied.

APPENDIX E

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
[illegible] DIVISION

2.

Name of Presiding Judge, Honorable Philip W Tone

Cause No. 72 C 2611 Date Dec 27, 1972

Title of Cause Dettlebach et al v United States Commissioner of Internal Revenue

Brief Statement of Motion

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent.

Plaintiffs' complaint seeking review of the failure of defendant to pay a reward for receipt of information concerning violations of revenue laws is dismissed for failure to state a claim upon which relief can be granted. The action is brought pursuant to the the Administrative Procedure Act, 5 USC § 701 et seq. It is clear, however, that the decision to pay a reward has been committed to agency discretion. 26 USC § 7623; 26 CFR § 301.7623-1. Accordingly, judicial review of such action is inappropriate under the provisions of 5 USC § 701(a)(2).

Tone, J

Reserve space below for notations by minute clerk

APPENDIX F

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

DOCKET — EASTERN DIVISION

2

Name of Presiding Judge, Honorable Philip W. Tone

Cause No. 72 C 2611 Date Nov 7, 1972

Title of Cause Sydney Gottlieman v United States Commissioner of Internal Revenue

Brief Statement of Motion

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent

Tone, J

Reserve space below for notations by minute clerk

Plaintiff is ordered to file an amended complaint which conforms to the requirements of F.R.C.P. 8(a) and 8(e)(1). Unlike the present complaint, the amended complaint should contain simple, concise and direct statements.

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

APPENDIX G

JUDGE TONE

Name of Presiding Judge, Honorable EDWIN A. ROBSON, Chief Judge, RICHARD B. AUSTIN, JAMES B. PARSONS, HUBERT L. WILL, BERNARD M. DECKER, Judges, Executive Committee
Cause No. 72 C 2611
Date 10-19-72

Title of Cause SYDNEY GETTELMAN vs. UNITED STATES COMMISSIONER OF INTERNAL REVENUE

3

Brief Statement of Motion

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent.

EAR

Reserve space below for notations by minute clerk

FOR THE EXECUTIVE COMMITTEE

After consideration by the Executive Committee, it is ORDERED that this case be assigned to the calendar of an individual Judge in accordance with Rule 10 B 2 of the General Rules of this Court. It is also ORDERED that summonses are not to issue in this matter until further Order of Court.

(Assigned to Judge Tone)

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

APPENDIX B — EASTERN DIVISION

Name of Presiding Judge, Honorable William J. Lynch

Cause No. 70 C 2779 — Date March 5, 1971

Title of Cause: Sydney Gettelman v. Commissioner of Internal Revenue

Brief Statement of Motion: Motion to reconsider the Court's order of February 17, 1971 dismissing the complaint in the above entitled cause.

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent.

Reserve space below for notations by minute clerk

ORDERED: Plaintiff's motion to reconsider is hereby denied.

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

APPENDIX I

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable William J. Lynch

Cause No. 70 C 2779 Date Feb. 17, 1971

Title of Cause Sydney Gettelman v. Commissioner of Internal Revenue

Brief Statement of Motion Defendant's Motion to Dismiss

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent.

Reserve space below for notations by minute clerk

ORDER: Defendant's motion to dismiss is granted in accordance with Rule 12(b)(1), (2) and (6) of the Federal Rules of Civil Procedure. Plaintiff has not alleged the substance of a contract cause of action against the United States and plaintiff is not entitled to recover upon the facts alleged. Chase v. U.S. 60 F. Supp. 211 (1945); Barker v. Lein 366 F. 2d 757 (1966)

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

APPENDIX J

Form 211 (Rev. Feb. 1960)	U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE APPLICATION AND PUBLIC VOUCHER FOR REWARD FOR ORIGINAL INFORMATION	CLAIM NO. INT. REV. SCHEDULE NO.

I, [redacted] (Name of Claimant) Social Security Number 337-14-[redacted]

[redacted] (Address)

hereby apply for a reward, in accordance with law and regulations, for original information furnished to [redacted] (Name, title and address of Internal Revenue Officer)

on the 12th day of February 1962, leading to detection of a violation of the internal revenue laws of the United States by [redacted] (Name of taxpayer)

[redacted] (Address of taxpayer)

and to the recovery of internal revenue taxes, penalties, fines and forfeitures. I was not an employee of the Treasury Department at the time I came into possession of the information or at the time I divulged it.

I declare, under penalties of perjury, that this application (including any accompanying statements, if any), has been examined by me and to the best of my knowledge and belief is a true and complete statement.

February 12, 1962 [redacted] (Signature of claimant)

ALLOWANCE OF REWARD

DISTRICT	AMOUNT OF SUM RECOVERED	AMOUNT OF REWARD
	$	

In consideration of the original information furnished by the above-mentioned claimant concerning a violation of the internal revenue laws which led to the recovery of internal revenue taxes, penalties, fines, and forfeitures in the sum indicated above, I hereby approve the reward for payment in the amount stated.

DATE	SIGNATURE OF DISTRICT DIRECTOR

APPROVAL FOR PAYMENT

Funds available. Prevalidation document attached.

DATE	BY (Fiscal Manager, as Issued)

ACCOUNTING CLASSIFICATION

FORM 211 (REV. 3-60)

APPENDIX K

Address any reply to: P.O. Box 231, Los Angeles, Calif. 90053

US Treasury Department
Post Office Box 231
Los Angeles, Calif. 90053
Attn: Field Audit 406 DDM:MCT

District Director
Internal Revenue Service

Date: August 14, 1968 | In reply refer to: DDM:MCT Est. Conne

Mr. Sydney Gettelman
5009 Sheridan Road
Chicago, Illinois 60640

Dear Mr. Gettelman:

I have been assigned the audit of the Federal Estate Tax Return of the Estate of Frances L. Conne.

The Inheritance Tax Division of the State of California advises that you may have information regarding assets omitted from the Estate Tax Return.

I would appreciate any information you have that would assist me in making a fair and complete examination of this return.

Very truly yours,

William C. Taylor

William C. Taylor
Estate Tax Examiner

Chicago, Illinois
August 18, 1938

APPENDIX L August

Mr. William C. Taylor,
Estate Tax Examiner,
U.S. Treasury Department,
Los Angeles, California

Attention Field Audit 403 DISTRICT

Re: Estate of Frances L. Conno, Deceased

Dear Sir:-

I have today been instructed by the Intelligence Division of the Internal Revenue Service, to advise you to address your inquiry, addressed to me, regarding your audit of the Federal Estate Tax Return of the Estate of Frances L. Conno, deceased, to

Chief of Audit Division,
Internal Revenue Service,
Indianapolis, Indiana

Yours truly,
SYDNEY GETTELMAN

SG/c

5009 N. Sheridan Road,
Chicago, Illinois 60640

COPY

COPY

APPENDIX M

5003 N. Sheridan Road
Chicago, 40, Illinois.
August 17, 1938

Mr. Vergil Berry,
P.O. Box 184,
Indianapolis, Indiana

Dear Sir:- Re: Estate of Frances L. Conne, deceased

According to your instructions to me, when I phoned you on August 16th, and read Mr. Mc. Taylor's letter to me, I wrote him advising him to direct all inquiries to Chief of Audit Division, Internal Revenue Service, Indianapolis, Indiana.

Enclosed herewith are photostatic copy of Mr. Taylor's letter and copy of my letter to him.

Yours truly,
SYDNEY GETTLESON

SG/c
2 enclosures

APPENDIX F

US Treasury Department

District Director
Internal Revenue Service
P.O. Box 348, Indianapolis, Ind. 46206
NOV 13 1958
Code 430

Mr. Sidney Gettelman
5009 N. Sheridan Road
Chicago, Illinois 60640

Dear Mr. Gettelman:

This refers to your claim for reward filed on Form 211 in regard to certain income tax matters. Your claim was assigned No. DD:IND:1302.

Careful consideration was given to the information which you furnished and it was found to be of insufficient value to justify a reward. Therefore, your claim is not allowable.

Although your claim does not warrant payment of a reward, we appreciate your interest in the enforcement of the internal revenue laws.

Sincerely yours,

James E. Daly

James E. Daly
District Director

APPENDIX C

(Excerpt From T. D. 6421)

U. S. TREASURY DEPARTMENT
Internal Revenue Service

There is quoted below an excerpt from Treasury Decision No. 6121 which concerns rewards for information relating to violations of Internal Revenue Laws.

§ 301.7623 STATUTORY PROVISIONS; EXPENSES OF DETECTION AND PUNISHMENT OF FRAUDS.

SEC. 7623. EXPENSES OF DETECTION AND PUNISHMENT OF FRAUDS.

The Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law.

§ 301.7623-1 REWARDS FOR INFORMATION RELATING TO VIOLATIONS OF INTERNAL REVENUE LAWS.—(a) *In general.*—A district director of internal revenue may approve such reward as he deems suitable for information that leads to the detection and punishment of any person guilty of violating any internal revenue law, or conniving at the same. The rewards provided for by section 7623 are limited in their aggregate to the sum appropriated therefor and shall be paid only in cases not otherwise provided for by law.

(b) *Eligibility to file claim for reward.*—(1) *In general.*—Any person, other than certain present or former federal employees (see subparagraph (2) of this paragraph), who submits, in the manner set forth in paragraph (d) of this section, information relating to the violation of an internal revenue law is eligible to file a claim for reward under section 7623.

(2) *Federal employees.*—No person who was an officer or employee of the Department of the Treasury at the time he came into possession of information relating to violations of the internal revenue laws, or at the time he divulged such information, shall be eligible for reward under section 7623 and this section. Any other federal employee, or former federal employee, is eligible to file a claim for reward if the information submitted came to his knowledge other than in the course of his official duties.

(3) *Deceased informants.*—A claim for reward may be filed by an executor, administrator, or other legal representative on behalf of a deceased informant if, prior to his death, the informant was eligible to file a claim for such reward under section 7623 and this section. Certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to such a claim for reward on behalf of a deceased informant in order to show the authority of the legal representative to file the claim for reward.

(c) *Amount and payment of reward.*—All relevant factors, including the value of the information furnished in relation to the facts developed by the investigation of the violation, shall be taken into account by a district director in determining whether a reward shall be paid, and, if so, the amount thereof. The amount of a reward shall

payment what the district director deems to be adequate compensation in the particular case, normally not to exceed ten percent of the additional taxes, penalties, and fines which are recovered as a result of the information. No reward, however, shall be paid with respect to any additional interest that may be collected. Payment of a reward will be made as promptly as the circumstances of the case permit, but generally not until the taxes, penalties, or fines involved have been collected. However, the informant may waive any claim for reward with respect to an uncollected portion of the taxes, penalties, or fines involved, in which case the claim may be immediately processed. No person is authorized under these regulations to make any offer, or promise, or otherwise to bind a district director with respect to the payment of any reward or the amount thereof.

(d) *Submission of information.*—Persons desiring to claim rewards under the provisions of section 7623 and this section may submit information relating to violations of the internal revenue laws, in person, to the Office of the Director of the Intelligence Division, Washington 25, D.C., or to the office of a district director, preferably to a representative of the Intelligence Division thereof. Such information may also be submitted in writing to the Commissioner of Internal Revenue, Attention: Director, Intelligence Division, Washington 25, D.C., or to any district director, Attention: Chief, Intelligence Division. If the information is submitted in person, either orally or in writing, the name and official title of the person to whom it is submitted and the date on which it is submitted must be included in the formal claim for reward.

(e) *Anonymity.*—No unauthorized person shall be advised of the identity of an informant.

(f) *Filing claim for reward.*—An informant who intends to claim a reward under section 7623 should notify the person to whom he submits his information of such intention, and must file a formal claim, signed with his true name, as soon after submission of the information as practicable. If other than the informant's true name was used in furnishing the information, the claimant must include with his claim satisfactory proof of his identity as that of the informant. Claim for reward under the provisions of section 7623 shall be made on Form 211, which may be obtained from the offices of the district directors, or from the Commissioner of Internal Revenue, Washington 25, D.C. A claim for reward should be transmitted to a district director of internal revenue, Attention: Informant's Claim Examiner, or to the Commissioner of Internal Revenue, Attention: Director, Intelligence Division, Washington 25, D.C.

(g) *Claims involving Alcohol and Tobacco Tax Division.*—Rewards for information leading to the detection and punishment of persons guilty of violating the internal revenue laws administered by the Alcohol and Tobacco Tax Division shall be handled consistent with the provisions of this section, except that—

(1) Assistant regional commissioners, Alcohol and Tobacco Tax, under the direction and supervision of the regional commissioners, shall perform all functions delegated to district directors by these regulations, and

(2) The Director, Alcohol and Tobacco Tax Division, Washington 25, D.C., shall perform all functions delegated to the Director, Intelligence Division, Washington 25, D.C., by these regulations.

Rule 11. Signing of Pleadings. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statue, pleadings need not be verified or accompained by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

Rule 35. Determination of Causes by the Court in Banc

(*a*) *When Hearing or Rehearing In Banc Will Be Ordered.* A majority of the circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the court of appeals in banc. Such a hearing or rehearing is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

(*b*) *Suggestion of a Party for Hearing or Rehearing In Banc.* A party may suggest the appropriateness of a hearing or rehearing in banc. The clerk shall transmit any such suggestion to the judges of the court who are in regular active service but a vote will not be taken to determine whether the cause shall be heard or reheard in banc unless a judge in regular active service or a judge who was a member of the panel that rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

(*c*) *Time for Suggestion of a Party for Rehearing In Banc; Suggestion Does Not Stay Mandate.* If a party desires to suggest a rehearing in banc, the suggestion must be made within the time prescribed by Rule 40 for filing a petition for rehearing, whether the suggestion is made in such petition or otherwise. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the court of appeals or stay the issuance of the mandate.

Rule 40. Petition for Rehearing APPENDIX P (3)

(*a*) *Time for Filing; Content; Answer; Action by Court if Granted.* A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

APPENDIX Q (1)

§ 46. Assignment of judges; divisions; hearings; quorum

(a) Circuit judges shall sit on the court and its divisions in such order and at such times as the court directs.

(b) In each circuit the court may authorize the hearing and determination of cases and controversies by separate divisions, each consisting of three judges. Such divisions shall sit at the times and places and hear the cases and controversies assigned as the court directs.

(c) Cases and controversies shall be heard and determined by a court or division of not more than three judges, unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. A court in banc shall consist of all circuit judges in regular active service. A circuit judge of the circuit who has retired from regular active service shall also be competent to sit as a judge of the court in banc in the rehearing of a case or controversy if he sat in the court or division at the original hearing thereof.

(d) A majority of the number of judges authorized to constitute a court or division thereof, as provided in paragraph (c), shall constitute a quorum.

As amended Nov. 13, 1963, Pub.L. 88-176, § 1(b), 77 Stat. 331.

WESTERN PACIFIC RAILROAD CORP. ET AL. *v.*
WESTERN PACIFIC RAILROAD CO. ET AL.

APPENDIX Q (2)

Syllabus.

NO. 150. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.*

Argued December 15–16, 1952.—Decided April 6, 1953.

1. Referring to a United States Court of Appeals, 28 U. S. C. § 46 (c) provides that, "Cases and controversies shall be heard and determined by a court or division of not more than three judges, unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in active service." *Held:*

(a) This statute is simply a grant of power to order hearings and rehearings *en banc* and to establish the procedure governing the exercise of that power. Pp. 250–259, 267.

(b) Litigants are given no *statutory* right to compel each member of the court to give formal consideration to an application for a rehearing *en banc*. Pp. 256–259, 267.

(c) The statute does not compel the court to adopt any particular procedure governing the exercise of the power; but, whatever procedure is adopted, it should be clearly explained, so that the members of the court and litigants in the court may become thoroughly familiar with it. Pp. 259–261, 267.

(d) Whatever procedure is adopted, it should not prevent a litigant from suggesting to those judges who, under the procedure established by the court, have the responsibility of initiating a rehearing *en banc*, that his case is an appropriate one for the exercise of the power. Pp. 261–262, 268.

2. Having lost their case in a three-judge division of a Court of Appeals, petitioners applied for a rehearing before the Court of Appeals *en banc*. The division of three judges denied rehearing and struck as unauthorized by law or practice the request that the rehearing be *en banc*. Petitioners then applied for leave to file a motion to reinstate their petition for rehearing *en banc*, claiming that such a request was authorized by statute and re-

*Together with No. 160, *Metzger et al.* v. *Western Pacific Railroad Co. et al.*, also on certiorari to the same court.

MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

In these cases, a corporation and

§ 453. Oaths of justices and judges

APPENDIX R (1)

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, ——— ———, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ——— according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God." June 25, 1948, c. 646, 62 Stat. 907.

APPENDIX R (2)

§ 455. Interest of justice or judge

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein. June 25, 1948, c. 646, 62 Stat. 908.

§ 1001. Statements or entries generally

APPENDIX R (3)

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 749.

Undelegated powers.

APPENDIX R (4)

(ARTICLE X[1])

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

January 21, 1974

Mr. Sydney Gettelman
5200 North Sheridan Road
Chicago, Ill. 60640

Appendix S

RE: GETTELMAN v. U.S. COMM'R. OF INT. REVENUE, 73-697

Dear Sir:

The Court today entered the following order in the above-entitled case:

The motion to dispense with printing the petition is denied with leave to file a printed petition in this case in conformity with Rule 39 of the Rules of this Court on or before February 11, 1974.

Very truly yours,

MICHAEL RODAK, JR., Clerk
By

Helen Taylor
Helen Taylor, (Mrs.)
Assistant Clerk

LIBRARY
SUPREME COURT, U. S.

No. 73-697

FILED
JAN 2 197
MICHAEL RODAK, JR.,

In the Supreme Court of the United States

OCTOBER TERM, 1973

SYDNEY GETTELMAN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-697

SYDNEY GETTELMAN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

This is the second time that petitioner has initiated a suit against the Commissioner of Internal Revenue seeking a reward for information furnished various revenue agents regarding the estate tax returns of Frances Conne and Louis Conne.

In the prior case, *Gettelman* v. *Commissioner of Internal Revenue* (C.A. 7, No. 71-1360) unreported order (Order of January 4, 1972), certiorari denied, 407 U.S. 915, where the identical claim was made, the court of appeals held that under Section 7623 of the Internal Revenue Code of 1954, the Commissioner's payment of a reward to informers was entirely discretionary, and that an attempt to enforce such a claim against the Commissioner was a suit against the United States which was barred by sovereign immunity (Pet. App. C 4). See *Magnus* v. *United*

States, 234 F. 2d 673 (C.A. 7). Since the issue raised here by petitioner has already been litigated in a prior case in which a final judgment was rendered against him, the court of appeals correctly held that this action is barred by *res judicata* (Pet. App. C 1-2).[1] Contrary to petitioner's contention (Pet. 2, 7-9, 14-15), the Constitution does not prohibit the operation of the doctrine of *res judicata.*[2] See *e.g., Commissioner* v. *Sunnen,* 333 U.S. 591; *United States* v. *International Building Co.,* 345 U.S. 502; *Pepper* v. *Bankers Life and Casualty Co.,* 414 F. 2d 356 (C.A. 8).

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JANUARY 1974.

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[1]Moreover, as the court of appeals stated in its first decision, the Commissioner had processed petitioner's claim for a reward by denying his claim (Pet. App. C 3-4). There was thus full compliance with Section 301.7623-1(c) of the Treasury Regulations on Procedure and Administration.

[2]The court of appeals denied petitioner's petition for rehearing and suggestion for rehearing *en banc* (Pet. App. A). Petitioner argues (Pet. 9) that the clerk of the court of appeals failed to transmit his petition for rehearing and suggestion that rehearing be *en banc* in violation of Rule 35(b) of the Federal Rules of Appellate Procedure. But that rule merely provides that a party's suggestion for a hearing or rehearing *en banc* will be transmitted by the clerk to the court but that no vote will be taken on the suggestion unless a judge on the panel that rendered the decision or a judge in regular active service requests one. Here, the corrected order issued by the court of appeals on August 6, 1973 (Pet. App. A) indicates that the clerk complied with Rule 35(b), and that no vote was requested by either a member of the panel or a judge in active service.

DOJ-1974-01

SUPREME COURT, U. S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

Supreme Court, U. S.
FILED
MAR 28 1974
MICHAEL RODAK, JR., CLERK

.....

No. 73-697

SYDNEY GETTELMAN, PETITIONER

v.

U.S. COMMISSIONER OF INTERNAL REVENUE

.....

ON PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS

APPLICATION TO SUSPEND ORDER OF DENIAL

OF CERTIORARI

....

SYDNEY GETTELMAN PRO SE

5200 North Sheridan Road

Chicago, Illinois 60640

275-3385

March 26, 1974

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

March 4, 1974

Mr. Sydney Gettelman
5200 North Sheridan Road
Chicago, Ill. 60640

RE: GETTELMAN v. U.S. COMM'R. OF INT. REVENUE, 73-697

Dear Sir:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

MICHAEL RODAK, JR., Clerk
By

Helen Taylor
Helen Taylor, (Mrs.)
Assistant Clerk

On March 4, 1974, this Court entered an order, denying the Petition for Writ of Certiorari in the above-entitled case.

Pursuant to Rule 25 (2), application is hereby made to suspend the order denying the Petition for Certiorari pending the filing and the final disposition of the Petition for Rehearing, which , it is contemplated, will be filed by the Petitioner, Pro Se. It is intended that such a Petition for Rehearing will be promptly filed, based on grounds permitted by Rule 58 (2). Grounds to be included in such Petition for Rehearing relate to this Court's authority and responsibility to declare the court of appeals decision rendered in this case, void. On the basis that it conflicts with due process, equal protection of the laws, right to petition the Government for redress of grievances, guaranteed

the Petitioner by the Constitution and Bill of Rights., This invalid appellate court decision deprived the Petitioner of appellate review, to which this Petitioner is entitled.

Review on Writ of Certiorari is here a matter of right, not a matter of judicial discretion, review on Writ of Certiorari is here mandatory.

To deny this would be to affirm that the fountain of power has passed from the People to the People's deputies, that the reservations of particular rights and privileges, which are spelled out in the Constitution and Bill of Rights, mean nothing, and would be to affirm government without consent of the People. Until the People have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and

presumption, or even knowledge, of their sentiments, can warrant their deputies in a departure from it, prior to such an act.

WHEREFOR Petitioner prays that this Application be granted.

Petitioner certifies that Petition would be presented in good faith, and not for delay.

Petitioner certifies that the Petition would be restricted to the grounds above-specified.

Sydney Gettelman

SYDNEY GETTELMAN PRO SE

March 26, 1974